

## **REMARKS**

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

### **I. STATUS OF CLAIMS AND FORMAL MATTERS**

Claims 1-6 and 11-20 are still pending in this application. No new matter has been added.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

### **II. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME**

Claims 1-6 and 11-20 have been rejected as being obvious over Saito et al. (EP 0864567 – “Saito”).

Claims 1-6 and 11-20 have been rejected as being obvious over Lorenz et al. (WO 97/31904 – “Lorenz”; U.S. Patent 6,069,114 is the parallel U.S. application).

While the Saito and Lorenz generically refer to compounds with some structural similarity to the applicants claimed compounds, neither reference refers to the specific stereochemistry required at the 1 position of the compound, i.e. 1(R), nor does it require the level of stereochemical purity required by the claim 60 to 100% (R).

Both Saito and Lorenz are even further removed from the applicant's claimed invention when additional chiral centers are identified, e.g. see claims 17 and 18 where two stereochemical centers are present.

For these reasons Saito and Lorenz do not render the applicants' claims to be obvious.

### **III. THE DOUBLE PATENTING REJECTION HAS BEEN OVERCOME**

Claims 1-6 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending application SN: 10/368,856.

Applicants note that since the last Office Action, the claims in SN: 10/368,856 have been allowed and the patent has been granted as U.S. Patent 7,479,471 ("the '471 patent"). When comparing the claims as allowed against the claims currently under prosecution, there would be no basis for an obviousness-type double patenting rejection.

The clearest difference between the compounds of the present invention and the compounds of the '471 patent is that at the 6-position of the triazine group the compound of the present invention is at least  $-\text{CH}_3$  whereas the corresponding position of the '471 patent is a hydrogen. Other differences relate to scope of the present compounds in comparison to the compounds of the '471 patent such as a specific stereochemistry, 1(R), in the present invention, and the size of the bicyclic radical (the non-aromatic ring can be 5-6 membered whereas in the '471 patent it can be 4-8 membered).

As such one of ordinary skill in the art would not find the applicants' claimed compounds to be an obvious variation for this reason alone.

### **CONCLUSION**

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,  
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